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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN JOSE DIVISION

14 UNITED STATES OF AMERICA,) No. CR 12-00723 EJD
15 Plaintiff,)
16 v.) UNITED STATES' OPPOSITION TO
17 JOSE FARIAS BARAJAS,) DEFENDANT'S MOTION TO CONTINUE
18 Defendant.) SENTENCING TO MARCH 26, 2015
19

20 The government opposes defendant Jose Barajas's motion to continue his sentencing. He
21 entered his guilty plea on March 20, 2014. Docket No. 72. Recognizing that the defendant was facing a
22 significant sentence, and to give defense counsel additional time to prepare for sentencing, the original
23 sentencing date was set for October 7, 2014. *Id.* At the defendant's request, on September 30, 2014, the
24 parties stipulated to a continuance of the sentencing date to January 29, 2015. Docket No. 78. The basis
25 for the continuance was the need for the defense to conduct unspecified "sentencing related investigation
26 and evaluations." *Id.* at ¶ 2. The Court granted this request. Defendant now proffers that it requires
27 additional time because, in counsel's opinion, the defendant "suffers from severe cognitive and
28 psychological disabilities," and that these disabilities were a significant factor in the underlying offense

1 | conduct, and are a significant mitigating factor under 18 U.S.C. § 3553.

The government has two concerns. Foremost is the right of the victims to a conclusion of these proceedings without unnecessary delay. Federal Rule 32(b)(1). Second, the factual record concerning the purported disability is vague and unsubstantiated. The defendant did not participate in an interview by the Probation Officer during the presentence investigation, and nothing is noted in the PSR about any disability. Final PSR ¶¶ 58, 90, and 91. Defense claims that Mr. Barajas “has undergone neurological testing,” but no report has been provided to the government identifying what the “neurological test” was, by whom the test was conducted, or what the test determined. The government has not been provided any records by the defense substantiating any claims of a mental disease or defect. The defense also states that it has retained an expert to conduct testing and to prepare an evaluation, but the government has not been provided any expert discovery for this person.

12 The government respectfully requests that the Court set the matter for a status hearing. The
13 record should be clarified on what the claimed disability is, and whether or not the defendant is claiming
14 that he is suffering from a mental disease or defect rendering the defendant mentally incompetent to
15 continue these proceedings. 18 U.S.C. § 4241(a). The government also requests the opportunity to be
16 heard on the issue of expert testing, and whether the Court should order its own independent evaluation
17 as part of the presentence investigation.

18 Government counsel will make itself available this week should the Court wish to specially set
19 the matter prior to the holiday break.

21 | DATED: December 15, 2014

Respectfully submitted,

MELINDA HAAG
United States Attorney

/s/
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